

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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In re: :
 :
THE FINANCIAL OVERSIGHT AND : PROMESA
MANAGEMENT BOARD FOR PUERTO RICO, : Title III
 :
as representative of : Case No. 17-BK-3283 (LTS)
 :
THE COMMONWEALTH OF PUERTO RICO *et al.*, : (Jointly Administered)
 :
Debtors.¹ :
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In re: :
 :
THE FINANCIAL OVERSIGHT AND : PROMESA
MANAGEMENT BOARD FOR PUERTO RICO, : Title III
 :
as representative of : Case No. 17-BK-3566 (LTS)
 :
THE EMPLOYEES RETIREMENT SYSTEM OF THE :
GOVERNMENT OF THE COMMONWEALTH OF :
PUERTO RICO, :
 :
Debtor. :
----- X

**JOINT REPLY IN FURTHER SUPPORT OF URGENT MOTION TO MODIFY
ORDER REGARDING STAY AND MANDATORY MEDIATION WITH RESPECT
TO CERTAIN ISSUES RAISED IN CERTAIN CONTESTED MATTERS AND
ADVERSARY PROCEEDINGS RELATED TO THE BONDS ISSUED
BY THE EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO**

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Court Judge Laura Taylor Swain:

The Official Committee of Unsecured Creditors (the “Creditors’ Committee”),² the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “Retiree Committee” and, together with the Creditors’ Committee, the “Committees”), the Financial Oversight and Management Board for Puerto Rico (the “FOMB”), the Special Claims Committee of the Financial Oversight and Management Board for Puerto Rico (the “SCC”), the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and, together with the FOMB and the SCC, the “Government Parties”), certain groups of ERS bondholders represented by Jones Day and White & Case LLP (the “ERS Bondholder Groups”), and The Bank of New York Mellon, as Fiscal Agent for the ERS bonds (the “Fiscal Agent” and, together with the ERS Bondholder Groups, the Committees, and the Government Parties, the “Parties”) hereby file this *Joint Reply in Further Support of Urgent Joint Motion to Modify Order Regarding Stay and Mandatory Mediation with Respect to Certain Issues Raised in Certain Contested Matters and Adversary Proceedings Related to the Bonds Issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico* (the “Reply”). In support of this Reply, the Parties respectfully state as follows:

INTRODUCTION

1. Pursuant to the Stay Order,³ the Parties participated in discussions facilitated by the Mediation Team regarding the scheduling of certain ERS matters. The result of such

² The Committee is the official committee of unsecured creditors for all Title III Debtors, other than PBA and COFINA.

³ Capitalized terms used but not defined in this Reply have the meanings set forth in the *Urgent Joint Motion to Modify Order Regarding Stay and Mandatory Mediation With Respect to Certain Issues Raised in Certain Contested Matters and Adversary Proceedings Related to the Bonds Issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico* (the “Motion”). [Case No. 17-03283, Dkt. No. 680]

discussions is the briefing and discovery schedule set forth in the Motion and attached to the proposed order granting such Motion.

2. UBS Financial Services Incorporated of Puerto Rico (“UBS”) and Iris Rodriguez (“Ms. Rodriguez”) have each filed objections to the Motion, albeit on different grounds.⁴ UBS seeks to participate in the litigation of the Claim Objections and not be limited to filing a joinder to a motion for summary judgment or opposition thereto, while Ms. Rodriguez requests that the stay remain in place to allow for mediation of ERS-related matters.

3. As set forth below, both objections are premised upon a misunderstanding. First, the Parties never intended in the Motion to limit any Participant’s ability to participate in the litigation of the Claim Objections, including discovery and the summary judgment briefing. The Parties have revised the order to clarify this point. A copy of the revised proposed order is attached hereto as Exhibit A, and a blackline of the revised proposed order marked to show changes against the version attached to the Motion is attached hereto as Exhibit B. The Parties are informed that the revised proposed order **resolves UBS’ objection to the Motion**. Second, in response to the objection of Ms. Rodriguez, the Parties note the mediation that gave rise to the Motion was not directed at the merits of the Claim Objections and other substantive issues in the Title III Cases, rather it was focused on the process for resolving such issues.

REPLY

4. The Parties jointly request that the Court modify the Stay Order and allow the litigation of the Claim Objections to proceed according to the schedule set forth in the Motion with the following modifications and clarifications. First, the Parties have clarified that the

⁴ See *Objection of UBS Financial Services Incorporated of Puerto Rico to the Urgent Joint Motion to Modify Order Regarding Stay and Mandatory Mediation With Respect to Certain Issues Raised in Certain Contested Matters and Adversary Proceedings related to the Bonds Issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico and Motion in Opposition to Motion Requesting Modification of Mediation Order* [Case No. 17-035666, Dkt Nos. 682, 683]

October 25 deadline to respond to the Ultra Vires Issues only applies to the ERS Bondholder Groups and the Fiscal Agent.

5. Second, the Parties propose adding two new deadlines to allow Participants to serve discovery: November 25, 2019 will be the deadline for Participants to serve written discovery that is unique to any such Participant and not otherwise duplicative of the written discovery served by the Parties; and December 16, 2019 will be the deadline for responses to any such supplemental discovery requests.⁵

6. Third, the language of the schedule is clarified to make clear that any Participant may file a motion for summary judgment or an opposition thereto.⁶ The inclusion of a deadline for a Participant to file a joinder was intended to assist Participants for whom preparing a summary judgment motion or opposition would be cost-prohibitive, not as a means for precluding Participants from briefing the relevant issues.

7. The Parties are informed that these modifications and clarifications resolve UBS' objection to the Motion.

8. Finally, Ms. Rodriguez's objection should be overruled. As indicated above, the mediation that gave rise to the Motion and agreed schedule was procedural in nature. Further, the scheduling of litigation on the Claim Objections does not preclude substantive mediation of the underlying issues; it simply sets a schedule in the event that a litigated resolution is necessary.

9. In drafting that schedule, the Parties were also mindful of the fact that many bondholders do not have the resources to litigate the Claim Objections, which is why they

⁵ The written discovery served by the Parties (but not the responses) will be posted on the ERS Objection Website.

⁶ The Parties will work to coordinate among the Participants to ensure that the Court is not unduly burdened by motions and/or oppositions seeking duplicative relief.

propose granting Participants the ability to join in motions for summary judgment and oppositions thereto, rather than requiring each Participant to fully brief the issues. In addition, Participants will have easy access to the important materials filed in the litigation through the ERS Objection Website.

10. For foregoing reasons, the Parties request that the Court overrule the objections and grant the Motion as modified herein.

NOTICE

11. Notice of this Reply has been provided to the following entities, or their counsel, if known: (i) the U.S. Trustee; (ii) the Office of the United States Attorney for the District of Puerto Rico; (iii) the Financial Oversight and Management Board for Puerto Rico, (iv) the Puerto Rico Fiscal Agency and Financial Advisory Authority; (v) the Official Committee of Retired Employees of the Commonwealth of Puerto Rico; (vi) the insurers of the bonds issued or guaranteed by the Debtors; (vii) counsel to certain ad hoc groups of holders of bonds issued or guaranteed by the Debtors; (viii) holders of ERS bonds who are parties to any group that has filed a statement under Bankruptcy Rule 2019; (ix) The Bank of New York Mellon, as Fiscal Agent for the ERS Bonds; (x) all parties that have filed a notice of appearance in the above-captioned Title III cases; (xi) all defendants in the ERS Clawback Litigation and the ERS Lien Litigation; and (xii) all Participants.

WHEREFORE, the Parties respectfully request that the Court enter the proposed order, substantially in the form attached hereto as **Exhibit A**, and grant the Parties such other relief as is just and proper.

Dated: October 24, 2019

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